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No. 90-1126

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1991

BARBARA NORMAN, et al.,

Petitioners,

vs.

DOROTHY REED, et al.,

Respondents.

On Writ Of Certiorari To The
Supreme Court Of Illinois

PETITIONERS' SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

Page

Constitutional Provision Involved 1

Argument
Intervening events have occurred which confirm Petitioners' Contention that the four Democratic Party Illinois Supreme Court Justices' draft order, under review herein, was based on partisan political party considerations, and not on the constitution or the decisions of this court 2

Conclusion 6

Appendix.....App. 1

"Tiebreaker Drawing Set for Legislative Remap," by Thomas Hardy, political writer, Chicago Tribune, Thursday, Aug. 29, 1991, Section 2, page 2.....App. 1

"Luck of the Draw to Settle Remap Fight," by Thomas Hardy, political writer, Chicago Tribune, Thursday, September 5, 1991, Section 2, page 1.....App. 2

"Suburb gain seen as GOP wins remap panel vote," by Charles N. Wheeler III, Chicago Sun Times, Friday, September 6, 1991, page 1.....App. 3

"Republicans hit Jackpot in Legislative remap", Chicago Tribune, Friday, September 6, 1991, page 1.....App. 5

Table of Authorities

The 1970 Illinois Constitution
Article 4, Section 3 (b)..... 1

CONSTITUTIONAL PROVISION INVOLVED

The Constitutional Provision Involved is Article 4, Section 3(b) of the Illinois Constitution, which provides:

> "Legislative Redistricting:
>
> (b) In the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts.
>
> If no redistricting plan becomes effective by June 30 of that year, a Legislative Redistricting Commission shall be constituted not later that July 10. The Commission shall consist of eight members, no more than four of whom shall be members of the same political party.
>
> The Speaker & Minority Leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly.
>
> . . .
>
> Not later than August 10, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.
>
> If the Commission fails to file an approved redistricting plan, the Supreme Court shall submit the names of two persons, not of the same political party, to the Secretary of State not later than September 1.
>
> Not later than September 5, the Secretary of State publicly shall draw by random selection

the name of one of the two persons to serve as the ninth member of the Commission.

Not later than October 5, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

An approved redistricting plan filed with the Secretary of State shall be presumed valid, shall have the force and effect of law & shall be published promptly by the Secretary of State."

ARGUMENT

INTERVENING EVENTS HAVE OCCURRED WHICH CONFIRM PETITIONERS' CONTENTION THAT THE FOUR DEMOCRATIC PARTY ILLINOIS SUPREME COURT JUSTICES' DRAFT ORDER UNDER REVIEW HEREIN WAS BASED ON PARTISAN POLITICAL PARTY LOYALTIES, CONCERNS & CONSIDERATIONS, AND NOT ON THE CONSTITUTION OR DECISIONS OF THIS COURT.

Intervening events have occurred, after Petitioners filed their briefs herein, all of public record, of which this Court may take Judicial notice, and which Petitioners' urge confirm Petitioners' Contention that the draft order of the four Democratic Party Illinois Supreme Court Justices, which removed the Harold Washington Party (HWP) and the HWP Candidates from the November 6, 1991 Cook County, Illinois election ballot, under review herein, was based on partisan political party loyalties, concerns, & considerations, rather than on the Constitution or the decisions of this Court.

For clarity, a brief preliminary statement of events which preceded these intervening events is helpful.

Three of the four Democratic Party Illinois Supreme Court Justices, who entered the HWP removal draft order on Oct. 12, 1991, were elected or appointed to the Illinois Supreme Court from Chicago, Cook County, Illinois. They were Justices, Daniel P. Ward, John Stamos and William Clark. Justice Ward served out his term and retired on December 5, 1990. On December 6, 1990, Justice Ward was replaced on the Illinois Supreme Court by Justice Michael Bilandic, a Democratic Party faithful stalwart from former Major Richard J. Daley's Chicago 11th Ward who was elected mayor of the city of Chicago by the Chicago City Council upon Mayor Daley's death on December 20, 1976. Justice Bilandic ran and was elected to fill Justice Ward's ensuing Dec. 6, 1990 vacancy on the Illinois Supreme Court in the same Nov. 6, 1990 election, from which ballot the four Democratic Party Justices had removed the HWP and its Candidates. Charles Freeman, also a Chicago Cook County Democrat Party loyalist, replaced Justice Stamos on the Illinois Supreme Court in the same election. Thus, the composition of the Illinois Supreme Court remained four Democratic Party Justices, three of whom were elected from Cook County, and the fourth from the East, St. Louis, and Granite City, Ill. area, and three Republican Illinois Supreme Court Justices from the collar counties of Cook County and from down state Illinois.

Article 4, Section 4 of the Illinois Constitution mandates redistricting of the Illinois Legislative Districts in the year following each Federal decennial census. The Illinois Supreme Court Democratic and Republican Party Justices play an extremely vital role in this Constitutional

legislative redistricting scenario. The Democratic Party dominated General Assembly enacted a legislative redistrict map, which was vetoed by Republican Governor Jim Edgar as politically unfair and violative of the Voting Rights Act. Thus, a Legislative Redistricting Commission was required by the Illinois Constitution to be appointed to redistrict the state.

This Legislative Redistricting Commission is composed of eight members, four Democrats and four Republicans appointed by the majority and minority leaders of both houses of the Illinois General Assembly. This evenly divided Legislative Redistricting Commission was unable to agree on a legislative redistrict map. By reason thereof, the Illinois Constitution required the Illinois Supreme Court to "Submit the names of two persons, not of the same political party, to the Secretary of State," who is constitutionally mandated to publicly draw by random selection the name of one of the two persons to break the tie, and serve as the ninth and deciding member of the Legislative Redistricting Commission.

The three Republican Illinois Supreme Court Justices chose the Illinois Republican Party chairman, Albert M. Jourdan, Jr. as the person's name to be drawn by the Secretary of State to protect, aid, and promote the welfare and interests of the Republican Party in drafting a legislative redistrict map.

Of all the Democratic Party members in the State of Illinois who could have been chosen by the four Democratic Party Illinois Supreme Court Justices to aid, protect and promote the welfare and interests of the Democratic Party in drafting a legislative redistrict map, who did the

four Democratic Party Illinois Supreme Court Justices choose? None other than retired Democratic Party Illinois Supreme Court Justice Daniel P. Ward. These four Democratic Party Illinois Court Justices apparently knew and they were well satisfied that their former judicial colleague and associate was up to the task and capable of preserving and benefiting Democratic Party interests.

Thomas Hardy, political writer for the Chicago Tribune, Section 2, page 2, in an article entitled, "Tiebreaker drawing set for legislative remap.", stated that "The decision of the 'winner' [in the drawing of Republican State Party Chairman, Albert M. Jourdan, Jr. or former Democratic Party Illinois Supreme Court Justice Daniel Ward] On a remap will determine the partisan balance of power in the General assembly for the next decade." (appendix page 1)

On Sept. 5, 1991, Thomas Hardy stated in the Chicago Tribune, Section 2, page 1, "Luck of the Draw to settle remap fight," that "If Ward's name is picked, it is expected he will cast the deciding vote for a map of legislative boundaries assuring Democratic Control of the General Assembly into the 21st Century and relegate Republicans to another decade in the minority. . . . Neither of the tiebreaker candidates, nominated last week by the Illinois Supreme Court, is a stranger to Illinois politics . . . " (appendix p. 2).

Incidentally, Illinois Republican Party Chairman Albert Jourdan, Jr. was chosen from the two name lottery by Secretary of State Ryan to break the tie on the Legislative Redistricting Commission. (appendix p. 2-6).

CONCLUSION

The competing Harold Washington Party's placement on the Nov. 6, 1990 ballot would adversely affect the Democratic Party State and County candidates in that election. Conversely, the four Democratic Party Justices draft order removing the HWP and its candidates from the Nov. 6 ballot would benefit the Democratic Party and its candidates in that election. The removal draft order did not cite or discuss a single case as authority for removal of the HWP and its candidates from the ballot. More particular, the four Democratic Party Illinois Supreme Court Justices did not cite or discuss in their removal draft order this Court's decisions in *Illinois State Board of Election v. Socialist Workers Party*, 440 U.S. 173 (1979); or *Moore v. Ogilvie*, 394 U.S. 814 (1969), both ballot access authorities from Illinois, and both in point with the instant case, as pointed out and reminded by the three dissenting Republican Party Illinois Supreme Court Justices in their two dissenting opinions. The four Democratic Party Illinois Supreme Court Justices also violated their promises of an opinion explaining the reasons for their removal of the HWP from the ballot, an unprecedented failure which has never before occurred. It was extraordinarily unusual in the first instance for the Illinois Supreme Court to remove the appeal of this case from the appellate court, and grant leave for a direct appeal to it. The conglomerate of these foregoing extremely rare and unique circumstances manifestly inveterate that the four Democratic Party Illinois Supreme Court Justices' order removing the HWP and its candidates from the Nov. 6 ballot was purely a political ruling, based on partisan political party loyalties and

concerns, contrary to the United States Constitution and this Court's decisions. It must therefore be reversed and Petitioners so pray.

Respectfully submitted
and prayed,

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APPENDIX 1

Chicago Tribune, August 29, 1991, Section 2, page 2

"Tiebreaker drawing set for legislative remap"
by Thomas Hardy

"The Illinois Supreme Court named former Justice Daniel Ward, a Democrat, and state Republican Party Chairman Al Jourdan on Wednesday as tiebreaker options in a drawing to end a legislative redistricting impasse.

Secretary of State George Ryan is scheduled to pick one of the two names in a lottery on Sept. 5. *The decision of the "winner" on a remap will determine the partisan balance of power in the General Assembly for the next decade.*

Members of the high court, in Chicago for a judicial conference, submitted the names to Ryan's office in an order that is part of the complicated, arcane series of steps outlined for redistricting by the state constitution.

Next week's drawing came into play when an eight-member Illinois Legislative Redistricting Commission, evenly divided between Democrats and Republicans, failed to compromise on new boundaries for legislators by Aug. 10.

The commission has continued negotiating, but parties on both sides were skeptical that an agreement can be reached by next Thursday.

The hot potato was tossed in the commission's lap on June 30 when the Democratic-controlled legislature met its deadline for redistricting 59 state Senate and 118 House seats, only to have it vetoed by Republican Gov. Jim Edgar as politically unfair and in violation of the Voting Rights Act.

The commission, with its tiebreaker ninth member, must file a final legislative redistricting plan with the secretary of state's office by Oct., 5. In either case, it is expected to face a court challenge.

A spokesman for Ryan said the drawing will be held in the House chamber of the Capitol. (italics ours)

Chicago Tribune, Thursday, Sept. 5, 1991, page 1, Section 2

"Luck of the draw to settle remap fight"
by Thomas Hardy

" . . . Amid some pomp, and not a little nervousness among legislators whose futures hang in the balance, *Secretary of State George Ryan on Thursday will pluck the name of Democrat Daniel Ward or Republican Albert Jourdan from a crystal bowl. The simple gesture,* performed in the imposing House chamber in Springfield, *will designate a winner to act as the tiebreaker on a deadlocked Legislative Redistricting Commission.* Because Ryan's blind choice will have a major impact on Illinois politics into the next decade, a chorus of calls had begun for a constitutional amendment to end the peculiar winner-take-all format unique to Illinois . . .

. . . *If Ward's name is picked, it is expected he will case the deciding vote for a map of legislative boundaries assuring Democratic control of the General Assembly into the 21st Century and relegating Republicans to another decade in the minority.*

If Jourdan is chosen, the GOP state party chairman will likely favor a remap plan shifting control of the

Senate to Republicans as early as next year's elections and making the House a politically competitive, nearly balanced chamber . . .

. . . Under provisions of the state constitution, Thursday's lottery is the endgame in a seven-month, partisan chess match that began when the 1990 census date came out in February.

The eight-member redistricting commission, four Democrats and four Republicans appointed by the legislative leaders, failed to muster five votes for a compromise plan after Edgar vetoed a Democratic-passed remap June 30 . . .

. . . *Neither of the tiebreaker candidates, nominated last week by the Illinois Supreme Court, is a stranger to Illinois politics. Ward, 73, retired last year after 24 years on the Supreme Court* and is a former Cook County state's attorney. Jourdan, 56, is McHenry County auditor in addition to being the state Republican chairman . . . " (italics ours)

Chicago Sun Times, Friday, September 6, 1991 page 1

"Suburb gain seen as GOP wins remap panel vote"
by Charles N. Wheeler III

"Republicans received an additional, tie-breaking vote on a deadlocked remap panel Thursday, portending a shift in legislative power from Chicago to the suburbs.

State GOP Chairman Albert M. Jourdan Jr.'s name was picked from a crystal bowl in a random, winner-take-all cartographic sweepstakes. Republicans now have a 5-4

majority on the Legislative Redistricting Commission, enough votes to enact a map of their choosing.

A GOP-leaning map, if it survives inevitable court challenges, could provide the underpinnings for Republicans to dominate the Legislature throughout the 1990s, just as the Democrats did in the last decade after winning a similar draw 10 years ago. Democrat-dominated Chicago is likely to lose legislative seats, while heavily Republican suburbs will probably gain some . . . The Republicans, stroke of good fortune came when Secretary of State George H. Ryan drew from a hand-cut crystal bowl a blue-and-white capsule that contained a slip of paper bearing Jourdan's name and signature.

Ryan opened the capsule, unfolded the paper, and read, Al Jourdan, setting off an elated roar from lawmakers, aides and others on the Republican side of the packed House chamber, where the drawing occurred.

Across the blue-carpeted center aisle, there was dead silence on the Democratic side, where spectators had hoped Ryan would pick instead the name of former Supreme Court Justice Daniel P. Ward, the Democratic tie-breaker nominee.

The drawing was mandated by the 1971 Constitution, which calls for a tie-breaker, if the remap commission fails to produce a plan by Aug. 10. The mapmaking assignment was handed to the panel's four Democrats and four Republicans after Edgar vetoed a redistricting plan crafted and passed by the Democrat-controlled Legislature.

'We would have been a lot happier if Justice Ward's name was pulled, but this is the first step in a long process,' said Democratic State Chairman Gary J. LaPaille, chief of staff for House Speaker Michael J. Madigan (D-Chicago) and a key architect of the 1981 plan." (italics ours)

Chicago Tribune, Friday, Sept. 6, 1991, page 1

"Republicans hit jackpot in legislative remap"

"As a smile flickered across his otherwise staid expression, Republican Secretary of State George Ryan stood at the speaker's lectern in the crowded House chamber and announced he had randomly selected the name of state GOP Chairman Albert M. Jourdan to act as tiebreaker on a deadlocked Legislative Redistricting Commission.

The selection of Jourdan to give the GOP a 5-4 majority on the remap panel will automatically color Illinois' new legislative boundaries in Republican shades.

Recognizing an opportunity to change the face of state politics and government in their collective likeness, Republicans acted like newly minted millionaires.

Unrestrained shouts of joy, seldom heard from the GOP side of the House during the last decade, arose after Ryan, a pharmacist, removed a teal blue slip of paper with Jourdan's signature from one of two large, blue-and-white pharmaceutical capsules held in a hand-cut crystal bowl.

Within minutes, champagne toasts to a new Republican era were being raised in GOP staff offices.

On the other side of the aisle, Democrats sat in stunned silence as the name of their tiebreaker candidate, former Illinois Supreme Court Justice Daniel Ward, sat undisturbed in the remaining capsule."